

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JEREMY JOHN-JASON CUMMINGS,  
Plaintiff,  
v.  
WASHOE COUNTY JAIL MEDICAL  
DEPARTMENT,  
Defendant.

Case No. 3:22-cv-00412-ART-CLB  
ORDER

Plaintiff Jeremy John-Jason Cummings brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Washoe County Detention Center. (ECF No. 1-1 at 1.) On October 13, 2022, this Court ordered Cummings to file an amended complaint within 30 days. (ECF No. 4 at 6.) The Court warned Cummings that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 6.) That deadline expired and Cummings did not file an amended complaint, move for an extension, or otherwise respond.

**I. DISCUSSION**

Federal District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to

1 dismiss an action on one of these grounds, the Court must consider: (1) the  
2 public's interest in expeditious resolution of litigation; (2) the Court's need to  
3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
4 favoring disposition of cases on their merits; and (5) the availability of less drastic  
5 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
6 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

7 The first two factors, the public's interest in expeditiously resolving this  
8 litigation and the Court's interest in managing its docket, weigh in favor of  
9 dismissing Cummings's claims. The third factor, risk of prejudice to defendants,  
10 also weighs in favor of dismissal because a presumption of injury arises from the  
11 occurrence of unreasonable delay in filing a pleading ordered by the court or  
12 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
13 1976). The fourth factor—the public policy favoring disposition of cases on their  
14 merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic  
16 alternatives can be used to correct the party's failure that brought about the  
17 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
18 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
19 the party has disobeyed a court order does not satisfy this factor); *accord*  
20 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that  
21 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted  
22 pursuit of less drastic alternatives prior to disobedience of the court's order as  
23 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
24 with the warning of dismissal for failure to comply[,]” have been “eroded” by  
25 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally  
26 dismissing a case, but must explore possible and meaningful alternatives.”  
27 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action  
28 cannot realistically proceed until and unless Cummings files an amended

1 complaint, the only alternative is to enter a second order setting another deadline.  
2 But the reality of repeating an ignored order is that it often only delays the  
3 inevitable and squanders the Court's finite resources. The circumstances here do  
4 not indicate that this case will be an exception: there is no hint that Cummings  
5 needs additional time or evidence that he did not receive the Court's screening  
6 order. Setting another deadline is not a meaningful alternative given these  
7 circumstances. So the fifth factor favors dismissal.

## 8 **II. CONCLUSION**

9 Having thoroughly considered these dismissal factors, the Court finds that  
10 they weigh in favor of dismissal. It is therefore ordered that this action is  
11 dismissed without prejudice based on Cummings's failure to file an amended  
12 complaint in compliance with this Court's October 13, 2022, order. The Clerk of  
13 Court is directed to enter judgment accordingly and close this case. No other  
14 documents may be filed in this now-closed case. If Cummings wishes to pursue  
15 his claims, he must file a complaint in a new case.

16 It is further ordered that Cummings's application to proceed *in forma*  
17 *pauperis* (ECF No. 1) is denied as moot.

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19 DATED THIS 30<sup>th</sup> day of November 2022.

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22 ANNE R. TRAUM  
23 UNITED STATES DISTRICT JUDGE  
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